

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

v.

CAUSE NO.: 1:01-CR-039-DCB-002

VANESSA HALL

DEFENDANT

and

BANK OF WIGGINS

GARNISHEE

ORDER

This matter is before the Court on Defendant Vanessa Hall ("Defendant")'s Motion to Dismiss or Quash [ECF No. 66].¹ Having reviewed the Motion, the record, applicable law and being

¹ The Court notes that Defendant filed a single document titled "Answer to Writ of Garnishment and Motion to Dismiss or Quash" [ECF Nos. 65 & 66]. As explained in the clerk's docket annotation, these should have been filed as separate documents. See docket annotation dated 4/27/2022, modified on 9/28/2022. In addition, the governing statute requires the garnishee (i.e., Bank of Wiggins), not the defendant, to answer a writ of garnishment. 28 U.S.C. 3205(c)(4). The Clerk's Notice to Vanessa Hall, [ECF No. 64], summarized, in part, the procedure applicable to the defendant-judgment debtor. Accordingly, for the purposes of this Order, the Court will disregard the portion of Defendant's Motion to Dismiss or Quash that constitutes an improper answer to the Writ of Garnishment Issued as to Bank of Wiggins [ECF No. 63] and will focus on the paragraphs that are titled "Affirmative Defenses." The Court interprets the "affirmative defenses" to be Defendant's arguments in support of her request to dismiss or quash the Writ of Garnishment.

otherwise advised as to the premises, the Court finds and orders as follows:

BACKGROUND

After the jury returned a verdict of guilty on all fourteen (14) counts of the indictment, this Court entered judgment against Defendant on September 30, 2002. [ECF No. 56]. Defendant was sentenced to twenty-one (21) months imprisonment, three (3) years supervised release, a special assessment of \$1400, and restitution (jointly and severally with her co-defendant) in the amount of \$108,979.13. Id. According to the government, Defendant rejected in writing the voluntary monthly payment plan proposed by the government. [ECF No. 68] at 1-2. Defendant claimed that the government did not have the authority to collect on Defendant's debt. Id. On April 18, 2022, the government filed with the Clerk of Court an Application for Writ of Garnishment on the annuity retirement of Defendant pursuant to the Mandatory Victims Restitution Act and 28 U.S.C. § 3205. [ECF No. 62]. The Clerk issued a Writ of Garnishment to the garnishee, Bank of Wiggins, on the same day. [ECF No. 63]. In response, on April 27, 2022, Defendant moved to dismiss or quash the Writ of Garnishment. [ECF No. 66]. The Bank of Wiggins filed its Answer to the Writ of Garnishment on April 29, 2022. [ECF No. 67]. Defendant filed no objection to Bank of Wiggins's

answer and did not request a hearing as Defendant was entitled to do under 28 U.S.C. § 3205(c)(5). The deadline for doing so has expired. Id. The procedure for objecting to the garnishee's answer and for requesting a hearing was explained in writing to Defendant in the Clerk's Notice Issued to Vanessa Hall [ECF No. 64] (the "Notice"). The Notice also provided Defendant with a noncompulsory form for asserting exemptions and requesting a hearing, which Defendant chose not to use. Id. at 5-6.

ANALYSIS

1. Defendant's Affirmative Defense No. 1.

Defendant first argues that any assets she might have are exempt from the government's restitution claim because "Mississippi law gives Mrs. Hall unlimited amount of exemptions from the claims of the United States government." [ECF No. 66] at 2. Defendant's reliance on Mississippi Code Section 85-3-1(c) is misplaced. The Clerk's Notice summarized for Defendant the only exemptions -- all of which are contained in Internal Revenue Code Section 6334 -- that apply to the enforcement of judgments for criminal fines and restitution under 18 U.S.C. § 3613. [ECF No. 64] at 1-2.² "Section 6334 of the Internal

² The Notice states in pertinent part:

Exemptions may protect the property from being taken by the

Revenue Code is the exclusive section that governs exemptions for federal criminal judgment liens.” United States v. Behrens, No. 8:09CR129, 2015 WL 13101968, at *1 (D. Neb. July 23, 2015), aff'd, 656 F. App'x 789 (8th Cir. 2016). As explained by a federal district court in our Circuit:

The plain language of [§ 3613(a)] indicates that the only exemptions for the criminal debtor owing restitution are set out in the referenced provisions of 26 U.S.C. § 6334(a) of the Internal Revenue Service Code.” United States v. Lazorwitz, 411 F.Supp.2d 634,

United States if you can show exemptions apply. Below is a summary of the **only** exemptions that apply to the enforcement of judgments for criminal fines and restitution under 18 U.S.C. § 3613:

1. Wearing apparel and school books. 26 U.S.C. § 6334(a)(1).
2. Fuel, provisions, furniture, and personal effects that do not exceed \$10,090.00 U.S.C. §6334(a)(2) and (g).
3. Books and tools of a trade, business, or profession that do not exceed \$5,050.00 U.S.C. § 6334(a)(3) and (g).
4. Unemployment benefits. 26 U.S.C. §6334(a)(4).
5. Undelivered mail. 26 U.S.C. §6334(a)(5).
6. Certain annuity and pension payments. -Annuity or pension payments under the Railroad Retirement Act, benefits under the Railroad Unemployment Insurance Act, special pension payments received by a person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor roll (38 U.S.C. § 1562), and annuities based on retired or retainer pay under Chapter 73 of Title 10 of United States Code. 26 U.S.C. §6334(a)(6).
7. Workmen's compensation. 26 U.S.C. §6334(a)(7).
8. Judgments for support of minor children, pursuant to a court judgment entered prior to the date of levy, to contribute to the support of defendant's minor children. 26 U.S.C. §6334(a)(8).
9. Certain service-connected disability payments. 26 U.S.C. §6334(a)(10).
10. Assistance under Job Training Partnership Act. 26 U.S.C. §6334(a)(12).

[ECF No. 64] at 1-2 (emphasis added).

637 (E.D.N.C.2005) (citing United States v. James, 312 F.Supp.2d 802, 805 (E.D.Va.2004) (emphasis added)); see also [United States v. Rice, 196 F.Supp.2d 1196, 1199 (N.D.Okla.2002)]. More specifically at issue here, the legislative history makes it clear that § 3613(a) was intended to provide a "'federal collection procedure independent of State laws.'" Id. at 1199 (quoting S. REP. NO. 98-225, at 135 (1983), reprinted in 1984 U.S.C.C.A.N. 3182, 3318). Consequently, Smith Barney may not claim state law exemptions, including the Texas retirement plan exemption, unless such exemptions from levy are allowed by the Internal Revenue Code ("IRC").

United States v. Citigroup Glob. Markets, Inc., 569 F. Supp. 2d 708, 711 (E.D. Tex. 2007); see also Behrens, 2015 WL 13101968, at *1 (in federal garnishment action, court concluded: "As a matter of law, Section 6334 controls this Court's opinion.").

Defendant bears the burden to show the source of the garnishment is exempted. United States v. Taylor, 2013 WL 5962057, at *2 (D. Neb. Nov. 6, 2013) (citing 28 U.S.C. §§ 3202(d)(1), 3205(c)(5)). Having made no attempt to demonstrate an applicable exemption under 26 U.S.C. § 3664, the Court finds that Defendant has failed to meet her burden.

2. Defendant's Affirmative Defense No. 2.

Relying on an outdated fact sheet (revised July 2009) from the Wage and Hour Division of the United States Department of Labor, Defendant claims that, because she earns less than \$940.50 a month, she cannot be garnished "for anything." [ECF

No. 66] at 3; see fact sheet at [ECF No. 66-1]. The 2009 fact sheet and the current version of that fact sheet, which is available on the US Department of Labor website, both make clear that the restrictions on which Defendant relies **do not apply** to garnishments to recover debts due for federal taxes. Id.; see also <https://www.dol.gov/agencies/whd/fact-sheets/30-cppa#> (last visited 10/5/22). The statute that governs the enforcement of Defendant's judgment of restitution, 18 U.S.C. § 3613, states: "... an order of restitution made pursuant to section[] ... 3663A³ ... of this title, is a lien in favor of the United States on all

3 Defendant's multiple convictions for conspiracy to defraud the United States and bank fraud are subject to mandatory restitution under 18 U.S.C. § 3663A, which provides in pertinent part:

(a) (1) Notwithstanding any other provision of law, when sentencing a defendant convicted of an offense described in subsection (c), the court shall order, in addition to, or in the case of a misdemeanor, in addition to or in lieu of, any other penalty authorized by law, that the defendant make restitution to the victim of the offense or, if the victim is deceased, to the victim's estate. ...

(c) (1) This section shall apply in all sentencing proceedings for convictions of, or plea agreements relating to charges for, any offense--

(A) that is-- ...

(ii) an offense against property under this title, ... including any offense committed by fraud or deceit;

18 U.S.C.A. § 3663A (West).

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property and rights to property of the person fined as if the liability of the person fined were a liability for tax assessed under the Internal Revenue Code of 1986.” 18 U.S.C. § 3613(c). The Fifth Circuit has held that the lien created by a fine or restitution order is treated as a federal tax lien. United States v. Elashi, 789 F.3d 547, 549 (5th Cir. 2015). The limitations on garnishment referenced in the U.S Department of Labor fact sheet [ECF No. 66-1] do not apply to federal tax liens, and therefore have no effect on the garnishment for Defendant’s unpaid criminal fines and restitution.

3. Defendant’s Affirmative Defense No. 3.

Defendant next argues that Mississippi Code Section 15-1-47 provides a seven-year statute of limitations on the collection of her debt, which has expired. This is not the correct statute of limitations on the collection of a criminal monetary debt. The statute of limitations for Defendant’s criminal fines and restitution is set forth in 18 U.S.C. § 3613(b), which provides in pertinent part: “The liability to pay a fine shall terminate the later of 20 years from the entry of judgment or 20 years after the release from imprisonment of the person fined, or upon the death of the individual fined. The liability to pay restitution shall terminate on the date that is the later of 20 years from the entry of judgment or 20 years after the release

from imprisonment of the person ordered to pay restitution.”

The government states in its opposition that Defendant was released from prison in May 2004. [ECF No. 68] at 9. The applicable statute limitations for the collection of this debt has not expired.

4. Defendant’s Affirmative Defense No. 4.

Lastly, Defendant requests that the Court order the United States to cease and desist from its attempts to collect her debt. [ECF No. 66] at 3. Defendant claims that “she has served prison time on that debt, she has paid on it as best as she can, and all assets or income, if any, that she has, are clearly exempt property [under Mississippi law], or are barred by the statute of limitations” Id. at 3-4. As discussed above, Defendant has failed to meet her burden of demonstrating that her property is exempt from federal garnishment, and the twenty-year statute of limitations in 18 U.S.C. § 3613(b) has not expired. In addition, serving a prison sentence for fourteen (14) fraud convictions and making incomplete attempts to pay a criminal fine and mandatory restitution are not legitimate legal reasons to quash the Writ of Garnishment issued to Bank of Wiggins in this case.

Accordingly,

IT IS HEREBY ORDERED that Defendant's Motion to Dismiss or Quash [ECF No. 66] is DENIED.

SO ORDERED, this the 11th day of October 2022.

/s/ David Bramlette
UNITED STATES DISTRICT JUDGE